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House Bill 267

By: Representatives Kelley of the 16th, Willard of the 51st, Ramsey of the 72nd, Fleming of the 121st, Strickland of the 111th, and others

A BILL TO BE ENTITLED AN ACT

- 1 To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
- 2 change and clarify provisions relating to the witnessing requisites of deeds, mortgages, and
- 3 bills of sale; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 SECTION 1.

- 6 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
- 7 revising Code Section 44-5-30, relating to the requisites of deed to land, as follows:
- 8 "44-5-30.

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- 9 Except for documents electronically filed as provided for in Chapter 12 of Title 10 and Part
- 10 1 of Article 1 of Chapter 2 of this title, a deed to lands shall be an original document, in
- writing, signed by the maker, and attested by at least two witnesses an officer as provided
- in Code Section 44-2-15, and attested to or acknowledged before one other witness. It shall
- be delivered to the purchaser or his or her representative and be made on a good or valuable
- 14 consideration. The consideration of a deed may always be inquired into when the
- principles of justice require it."

SECTION 2.

- 17 Said title is further amended by revising Code Section 44-14-33, relating to attestation or
- 18 acknowledgment of mortgage, as follows:
- 19 "44-14-33.
- 20 In order to admit a mortgage to record, it must be attested by or acknowledged before an
- 21 officer as prescribed for the attestation or acknowledgment of deeds of bargain and sale;
- 22 and, in the case of real property, a mortgage must also be attested or acknowledged by one
- 23 additional witness. A mortgage shall be signed by the maker, attested by an officer as
- 24 provided in Code Section 44-2-15, and attested to or acknowledged before one other
- witness. In the absence of fraud, if a mortgage is duly signed, witnessed, filed, recorded,

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and indexed on the appropriate county land records, such recordation shall be deemed constructive notice to subsequent bona fide purchasers."

28	SECTION 3.
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- 29 Said title is further amended by revising Code Section 44-14-34, relating to attestation and
- 30 acknowledgment or probation of mortgages executed outside of this state, as follows:
- 31 "44-14-34.
- When executed outside this state, mortgages may be attested, acknowledged, or probated
- in the same manner as deeds of bargain and sale shall be signed by the maker, attested by
- an officer as provided in Code Section 44-2-15, and attested to or acknowledged before one
- 35 other witness."
- 36 SECTION 4.
- 37 Said title is further amended by revising Code Section 44-14-37, relating to the effect of the
- 38 failure to record a mortgage, as follows:
- 39 "44-14-37.
- 40 The effect of a failure to record a mortgage shall be the same as the effect of a failure to
- 41 record a deed of bargain and sale Reserved."
- 42 SECTION 5.
- 43 Said title is further amended by revising Code Section 44-14-61, relating to attestation of
- 44 deeds to secure debt and bills of sale, generally, as follows:
- 45 "44-14-61.
- 46 <u>Deeds In order to admit deeds</u> to secure debt or bills of sale to record, they shall be attested
- or proved in the manner prescribed by law for mortgages shall be signed by the maker,
- 48 <u>attested by an officer as provided in Code Section 44-2-15, and attested to or acknowledged</u>
- 49 <u>before one other witness.</u>"
- 50 **SECTION 6.**
- 51 Said title is further amended by revising Code Section 44-14-62, relating to attestation of
- 52 deeds to secure debt and bills of sale executed outside of this state, as follows:
- *"*44-14-62.
- When executed out of outside this state, deeds to secure debt and bills of sale may be
- 55 attested, acknowledged, or probated in the same manner as deeds of bargain and sale shall
- 56 be signed by the maker, attested by an officer as provided in Code Section 44-2-15, and
- attested to or acknowledged before one other witness."

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58 SECTION 7.

59 Said title is further amended by revising subsection (a) of Code Section 44-14-63, relating

- 60 to recording of deeds to secure debt and bills of sale to secure debt, as follows:
- 61 "(a) Every deed to secure debt shall be recorded in the county where the land conveyed is
- located. Every bill of sale to secure debt shall be recorded in the county where the maker,
- if a resident of this state, resided at the time of its execution and, if a nonresident, in the
- county where the personalty conveyed is located. Deeds or bills of sale not recorded shall
- remain valid against the persons executing them. The effect of the failure to record deeds
- and bills of sale shall be the same as the effect of the failure to record a deed of bargain and

67 sale."

68 SECTION 8.

69 All laws and parts of laws in conflict with this Act are repealed.